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TECH AIR OF NORTHERN CALIFORNIA,  
6 LLC [erroneously named as Tech Air, Inc.]

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 YESENIA MANFUT,  
11 Plaintiff,  
12  
13 v.  
14 TECH AIR, INC., and DOES 1 through 100,  
15 Defendants.

Case No.

(Alameda County County Superior Court,  
Case No. RG19001248)

**NOTICE OF REMOVAL OF ACTION TO  
FEDERAL COURT UNDER  
28 U.S.C. §§ 1331; 1367(A) AND 1441**

**[FEDERAL QUESTION]**

(Filed concurrently with Declaration of Angel  
R. Sevilla and Civil Case Cover Sheet)

Complaint Filed: January 3, 2019  
Complaint Served: February 28, 2019  
Removal Filed: March 20, 2019  
Trial Date: None Set

20  
21 To the Honorable Judges of the United States District Court for the Northern District of  
22 California, Plaintiff YESENIA MANFUT, and her attorneys of record:

23 PLEASE TAKE NOTICE that Defendant, TECH AIR OF NORTHERN CALIFORNIA,  
24 LLC [erroneously named as Tech Air, Inc.] ("Defendant"), hereby invokes this Court's  
25 jurisdiction under 28 U.S.C. §§ 1331, 1367(a) and 1441(a), and remove the above-entitled action  
26 to this Court from the Superior Court of the State of California for the County of Alameda.

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**PRELIMINARY STATEMENT OF JURISDICTION**

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2           1.       This Court has original jurisdiction over this action under 28 U.S.C.  
3 §§ 1331, 1367(a), and 1441(a) because it is a civil action brought under federal law.

4                               **VENUE**

5           2.       Although Defendant reserves the right to move for a transfer of venue to  
6 the venue most appropriate and convenient for all parties, Defendant alleges that venue lies in the  
7 United States District Court for the Northern District of California pursuant to 28 U.S.C.  
8 § 1441(a), which provides in pertinent part that “any civil action brought in a State court of which  
9 the district courts of the United States have original jurisdiction, may be removed by the  
10 defendant or the defendants, to the district court of the United States for the district and division  
11 embracing the place where such action is pending.” As stated above, Plaintiff brought this action  
12 in the Superior Court of the State of California, in and for the County of Alameda. Thus, venue  
13 properly lies in the United States District Court for the Northern District of California under 28  
14 U.S.C. §§ 84(a), 1391(a) and 1441(a).

15           3.       The United States District Court, Oakland or San Francisco Division, is the  
16 proper division for this action under Northern District of California, Local Rule 3-2(d), which  
17 states that all civil actions which arise in the county of Alameda shall be assigned to the Oakland  
18 or San Francisco Division.

19                               **PLEADINGS**

20           4.       On January 3, 2019, Plaintiff filed a civil Complaint against Defendant in  
21 the Superior Court of the State of California for the County of Alameda entitled “*Yesenia Manfut*  
22 *v. Tech Air, Inc.*,” Case No. RG19001248. A true and correct copy of the Complaint is attached  
23 to this Notice as **Exhibit A** to the Declaration of Angel R. Sevilla, filed herewith.

24           5.       Plaintiff alleged the following federal causes of action in the Complaint:  
25 (1) discrimination under the Family Medical Leave Act (“FMLA”), 29 U.S.C. § 2601, *et seq.*; and  
26 (2) retaliation under the FMLA, 29 U.S.C. § 2615, *et seq.*

27           6.       On March 19, 2019, Defendant filed and served its Answer in Alameda  
28 County Superior Court. A true and correct copy of Defendant’s Answer is attached as **Exhibit B**

1 to the Declaration of Angel R. Sevilla.

2 7. In accordance with 28 U.S.C. § 1446(d), the undersigned counsel certifies  
3 that a copy of this Notice of Removal and all supporting papers promptly will be served on  
4 Plaintiff's counsel and filed with the Clerk of the Alameda County Superior Court. Therefore, all  
5 procedural requirements under 28 U.S.C. § 1446 have been satisfied.

#### 6 **TIMELINESS OF REMOVAL**

7 8. Defendant filed this Notice of Removal within 30 days of February 28,  
8 2019, the date in which the Complaint was served on Defendant. (Sevilla Dec., ¶2.) Therefore,  
9 this Notice of Removal is timely under 28 U.S.C. § 1446(b).

#### 10 **FEDERAL QUESTION JURISDICTION**

11 9. Federal "district courts shall have original jurisdiction of all civil actions  
12 under the Constitution, laws, or treatises of the United States." 28 U.S.C. § 1331; *See also* 28  
13 U.S.C. § 1367(a).

14 10. "[A]ny civil action brought in a State court of which the district courts of  
15 the United States have original jurisdiction . . . may be removed by the defendant . . . to the  
16 district court of the United States for the district and division embracing the place where such  
17 action is pending." 28 U.S.C. § 1441(a); N.D. Local Rule 3-2(d).

18 11. Plaintiff's Complaint alleged the following federal causes of action in the  
19 Complaint: (1) discrimination under the FMLA, 29 U.S.C. § 2601, *et seq.*; and (2) retaliation  
20 under the FMLA, 29 U.S.C. § 2615, *et seq.*

21 12. Accordingly, Plaintiff's causes of action for violation of the FMLA arise  
22 under federal law, and permits removal based on federal question jurisdiction.

#### 23 **SUPPLEMENTAL JURISDICTION**

24 13. Plaintiff's remaining causes of action arise from the same transactions and  
25 rely on identical and/or substantially common facts for the resolution and thus form part of the  
26 same controversy under Article III as Plaintiffs' causes of action for violation of the FMLA. (*See*  
27 Exhibit A.) Plaintiff's third cause of action alleges retaliation in violation of the California  
28 Family Rights Act ("CFRA"). Plaintiff's fourth cause of action alleges discrimination under the

1 CFRA. Plaintiff's fifth cause of action alleges discrimination in violation of the California Fair  
 2 Employment and Housing Act ("FEHA"). Plaintiff's sixth cause of action alleges common law  
 3 wrongful termination in violation of public policy.

4 14. Plaintiff's remaining causes of action also rely in whole or in part on the same  
 5 course of conduct that Plaintiff alleges gives rise to the causes of action for violation of the  
 6 FMLA. Plaintiff alleges that she was terminated from employment while she was on a protected  
 7 leave of absence under the FMLA. (Complaint, ¶¶6-7.)

8 15. Because this Court has original jurisdiction over Plaintiff's causes of action for  
 9 violation of the FMLA, this Court should exercise supplemental jurisdiction over Plaintiff's  
 10 remaining claims – which are within the same case or controversy – pursuant to 28 U.S.C. §  
 11 1367(a). *See also Sea-Land Service, Inc. v. Lpozen International*, 285 F.3d 808, 813 (9th Cir.  
 12 2002); *Picard v. Bay Area Regional Transit Dist.*, 823 F. Supp. 1519, 1526 (N.D. Cal. 1993).

13 16. Defendant accordingly removes the above-titled action now pending in the  
 14 Superior Court for the State of California for the County of Alameda to this Court.

#### 15 CONCLUSION

16 WHEREFORE, Defendant prays that the above action now pending against it in the  
 17 Superior Court of the State of California for the County of Alameda be removed to this Court.

18  
 19 Dated: March 20, 2019

JACKSON LEWIS P.C.

20  
 21 By: /s/ Angel R. Sevilla  
 22 Angel R. Sevilla  
 23 Attorneys for Defendant,  
 24 TECH AIR OF NORTHERN  
 25 CALIFORNIA, LLC  
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